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the contract and a certain future date, was supported by a valuable consideration and mutuality of engagement.

[Ed. Note.—For cases in point, see vol. 43, Cent. Dig. Sales, §§ 31, 54-57.]

3. Same—Breach—Excuses for Nonperformance—Burden of Proof.

—In an action for breach of contract to deliver coal, the burden was on defendant to show that it was excused, under strike or car-shortage clauses of the contract, from performing the same.

[Ed. Note.—For cases in point, see vol. 43, Cent. Dig. Sales, § 1170.]

4. Same—Stipulations Excusing Nonperformance—Construction.—

A contract for the sale of coal, which provided that the seller would use every possible effort towards completing the contract, "but that it was subject to strikes * * * beyond the control" of the seller, bound the seller to deliver the coal, unless there was a strike which was so far beyond its control as to render performance impossible.

5. Same—Questions for Jury.—In an action for breach of a contract to deliver coal, whether defendant was prevented from performing its contract by a strike beyond its control, within the meaning of a clause of the contract excusing performance in case of such strikes, held, under the evidence, a question for the jury.

6. Same—Duty to Perform—Right to Impose Conditions.—Where a contract for the sale of coal required the seller to deliver coal at a certain price up to a certain amount, as ordered, the seller was not entitled to demand an indemnifying bond as a condition of delivering the coal after the same had advanced in price on the market, and the buyer was under no obligation to comply with such a demand.

7. Same—Demand of Performance—Question for Jury.—In an action for breach of a contract to deliver coal up to a certain amount, as ordered, whether plaintiff had demanded delivery of the coal, held, under the evidence, a question for the jury.

8. Same—Necessity of Demand.—Where a contract bound defendant to deliver coal to a certain amount, as ordered, it was incumbent on plaintiff to demand the coal as a condition of putting defendant in default for failing to deliver the same.

[Ed. Note.—For cases in point, see vol. 43, Cent. Dig. Sales, §§ 357, 1157.]

HARDING *v.* COMMONWEALTH.

March 1, 1906.

[52 S. E. 832.]

1. Intoxicating Liquors—Offenses—Charge of Offense—Sufficiency.

—Under Code 1904, § 4108, providing that an appeal from a judgment of conviction by a justice in certain cases shall be tried without

formal pleadings in writing, a warrant charging the unlawful sale of liquor, and made the basis of the trial in the circuit court on appeal from the justice's judgment, must be clear and specific, so as to inform accused of the offense with which he is charged; but such a warrant, charging that defendant did, on a certain day, in a certain magisterial district, and in a certain county, unlawfully sell certain kinds of intoxicating liquors to a certain person, and to divers other persons, was sufficiently definite.

2. Same—Evidence—Distinct Offenses.—In a prosecution for an illegal sale of liquor, where the warrant averred a sale to a certain person, and to divers other persons, on a certain date, evidence of a sale made by defendant on a previous date was inadmissible, although such sale was made during the year preceding the institution of the prosecution, within which, under Code 1904, § 3889, defendant might have been prosecuted for such sale.

[Ed. Note.—For cases in point, see vol. 29, Cent. Dig. Intoxicating Liquors, § 273.]

3. Criminal Law—Appeal—Harmless Error.—In a prosecution for an illegal sale of liquor, the act of the commonwealth's attorney in asking defendant, on cross-examination, whether he did not have a United States license to sell liquor, while objectionable, was not prejudicial, where the court told defendant he was not bound to answer, and instructed the jury that they could not draw any inference against defendant from his refusal to answer the same.

4. Intoxicating Liquors—Offenses—Punishment—Statutory Provisions.—Acts 1902-04, p. 224, c. 148, § 143, with reference to the unlawful sale of liquor, provides that a violation thereof shall be punished by fine, and, in the discretion of the court, by imprisonment. Such section also provides (on page 220) that it shall not be construed as repealing any special act prohibiting the sale of liquor in any county or town. Acts 1901-02, p. 601, c. 516, relative to the illegal sale of liquor in Lancaster county, provides that any person violating the same shall be fined not more than \$500, and may be imprisoned until the fine is paid. Held, that the general statute is inoperative in Lancaster county, and one convicted of violating the liquor law in that county can not be sentenced to confinement in the county jail in addition to a sentence of a fine.

TIDEWATER QUARRY CO. *v.* SCOTT.

March 1, 1906.

[52 S. E. 835.]

1. Action—Form—Waiver of Tort.—The tort involved in a conversation of property may be waived, and the injured party may